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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/015,599 | 12/17/2001 | Humiaki Matsukura | 4035-0145P | 4763 |
| 2292 | 7590 | 06/10/2004 | EXAMINER | |
| BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747 | | | MADSEN, ROBERT A | |
| | | ART UNIT | PAPER NUMBER | |
| | | 1761 | | |

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/015,599 | MATSUKURA ET AL. |
| | Examiner | Art Unit |
| | Robert Madsen | 1761 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 April 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/19/02, 04/19/02</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-6 in the response filed April 14, 2004 is acknowledged. The traversal is on the ground(s) that there is no undue burden on the examiner to consider all of the claims. This is not found persuasive because:
2. Parker (US 2899110) teaches the food package as recited in claims 1-3, but does not require a push out device (i.e. a container in combination with a depression member) as recited in claims 9 and 10 or the method of claims 7 and 8 in order to dispense the contents. Mueller (US 62131904) teaches a container with a depressing member as required by the device of claims 9 and 10, but the depressing member is used as a ink stamp and not in combination with the recited food package of claims 1-6 or in the method of claims 7 and 8.
3. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 are rejected under 102(b) as being clearly anticipated by Watanabe (JP 07-227214 A).

6. See English Abstract in light of Figures 1-4, Paragraphs 13-22, wherein the steps (i.e. angled segments) have annular bulges (i.e. at the arrow of "1") as shown in figures 1 and 2. Based on the figures 3 and 6 in view of Figures 2 and 5, the portion of the container which comprises the aperture (i.e. item 3 or 13) rests *inside* flanges 2 and 12, and thus flanges 2 and 12 serve as legs.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tanaka et al. (US 5232027).

8. See Abstract, Figures 1 and 4, Column 3, lines 37-62.

9. Claims 1 and 4 are rejected under 102(b) as being anticipated by Connolly et al. (US 4452823).

10. Connolly et al. teach a push out flexible cylinder (via twist cap 46), an upper seal (with 48), a lower seal (item 44), a leg (item 36), and holding ice cream (Abstract, Figure 4, Column 7, lines 4-30).

11. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker (US 2889110).

12. Parker teaches a flexible truncated cone-shaped container (i.e. Item 10 of Figure 5) for viscous foods having annular bulges (i.e. items 32) and steps

(i.e.30,29,28,27,26,25, etc.) wherein the bulges are uniform thickness (i.e. all are ribs 32) , a “bottom” with a removable seal on the push-out aperture (i.e. the opening at 8a is formed at use) ,there is an “upper” seal (i.e. item 13), and material is pushed out of the container for dispensing (Column 1, lines 15-32, Column 2, line 39 to Column 3, line 20). Examiner notes that the terms “upper” and “bottom” are relative, based on the direction of dispensing (i.e. upwardly or downwardly).

13. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Frankenberg (US 3227308).

14. Frankenberg teaches a flexible outer cylinder (i.e. item 11) that has an upper seal ((i.e. item 31 in Figures 5 and 6), a removable bottom seal (i.e. item 39 shown in Figure 8) , and annular bulges (i.e. shown in Figures 3 and 4) that are parallel to the bottom(Column 3, lines 10-20,35-41,60-67, Column line 29 to Column 5, line 7).

15. Claims 1-6 are rejected under 102(b) as being anticipated Scarnato (US 3939887).

16. Scarnato teaches a flexible cylinder for jellies with steps (item 6), bulges (item 8'), push out aperture (i.e. at base of neck 5) with a removable seal (item 13),a leg extending downward from the aperture(at 11a), a sealed upper opening (at 4).

Examiner notes that the terms "upper" and "bottom" are relative, based on the direction of dispensing (Column 5, lines 12-35, Embodiment of Figure 1, lines 9-56).

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Montgomery et al (US 5055336), McGill (US 5632415), and Nadelson (US 2092772) teach soft push out containers with viscous/semisolid foods.
18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.
19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761


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